

REPRESENTATIVE FOR PETITIONER:
Richard Archer, Paradigm Tax Group

REPRESENTATIVE FOR RESPONDENT:
Beth Henkel, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Industrial Redevelopment Fund LLC)	Petition Nos.: 20-012-14-1-3-01477-16
)	20-012-15-1-3-01153-17
Petitioner,)	
)	Parcel No.: 20-06-02-179-001.000-012
)	
v.)	County: Elkhart
)	
Elkhart County Assessor,)	Township: Concord
)	
Respondent.)	Assessment Year: 2014 & 2015

Appeal from the Final Determination of the
Elkhart County Property Tax Assessment Board of Appeals

Issued: 12-4-17

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Did Industrial Redevelopment Fund LLC (“Petitioner”) prove the 2014 and 2015 assessments were incorrect?

PROCEDURAL HISTORY

2. Petitioner initiated its 2014 assessment appeal on August 28, 2014 and its 2015 assessment appeal on September 25, 2015. The Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) issued its final determinations for 2014 and 2015 on May 23, 2016, and June 9, 2017, respectively. Petitioner then filed Form 131 petitions on July 7, 2016, for 2014, and July 26, 2017, for 2015 with the Board.
3. On September 7, 2017, the Board’s designated administrative law judge (“ALJ”), Dalene McMillen, held a hearing. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. The property under appeal is a manufacturing facility located at 222 Collins Road in Elkhart.
5. Richard Archer of Paradigm Tax Group was sworn in for Petitioner. Attorney Beth Henkel represented Respondent. Expert witness Gavin Fisher was sworn in for Respondent.¹
6. Petitioner offered the following exhibits:

- | | |
|------------------------|--|
| Petitioner Exhibit A – | Final purchase agreement for the subject property, dated March 20, 2013, |
| Petitioner Exhibit B – | Several emails regarding the purchase of the subject property from October 24, 2012, through March 12, 2013, |
| Petitioner Exhibit C – | Original purchase agreement for the subject property, |
| Petitioner Exhibit D – | Email correspondence between Richard Archer of Paradigm Tax Group and Tiffany Williams of Bluelinx, |
| Petitioner Exhibit E – | 2014 property record card (“PRC”) for the subject property, |

¹ Tylan Miller of Equi-Val Tax Solutions was present to observe the hearing.

- Petitioner Exhibit F – 2015 PRC for the subject property,
- Petitioner Exhibit G – 131 petition for 2014,
- Petitioner Exhibit H – 131 petition for 2015,
- Petitioner Exhibit I – Four pages of the Elkhart County 2014 ratio study,
- Petitioner Exhibit J – Sales disclosure form for the subject property dated June 12, 2013,
- Petitioner Exhibit K – *TPI of Montgomery County, LLC v. Montgomery County Assessor*, Petition No. 54-030-09-1-4-00176, et. al. (IBTR August 26, 2013),
- Petitioner Exhibit L – *Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311 (Ind. Tax Ct. 2010).

7. Respondent offered the following exhibits:

- Respondent Exhibit A – 2009 listing sheet for Dexter Axle (i.e. subject property) and LoopNet map,
- Respondent Exhibit B – Sales disclosure form for the subject property, dated October 17, 2012,
- Respondent Exhibit C – Three photographs and summary of property information for the subject property,
- Respondent Exhibit D – Comparable sales analysis,
- Respondent Exhibit E – Comparable sales map,
- Respondent Exhibit F – Sales disclosure form and PRC for 14489 US 20 in Middlebury,
- Respondent Exhibit G – Sales disclosure form and PRC for 2040 Industrial Parkway in Elkhart,
- Respondent Exhibit H – Sales disclosure form and PRC for 1515 Leininger in Elkhart,
- Respondent Exhibit I – Sales disclosure form and PRC for 1301 North Nappanee Street in Elkhart,
- Respondent Exhibit J – Sales disclosure form and PRC for 1900 West Lusher in Elkhart,
- Respondent Exhibit K – Sales disclosure form and PRC for 640 Collins Road in Elkhart,
- Respondent Exhibit L – Sales disclosure form and PRC for 2701 Ada Drive in Elkhart.

8. The following additional items are included as part of the record:

- Board Exhibit A – Form 131 petitions and attachments,
- Board Exhibit B – Hearing notices,
- Board Exhibit C – Hearing sign-in sheets.

9. The PTABOA determined the following values:

Year	Land	Improvements	Total
2014	\$250,700	\$976,400	\$1,227,100
2015	\$250,700	\$993,000	\$1,243,700

10. Petitioner requested a total assessment of \$1,000,000 each for 2014 and 2015.

OBJECTIONS

11. Respondent objected to Petitioner’s Exhibits B, C, and D (emails and a purchase agreement), as hearsay. In response, Mr. Archer stated these exhibits were introduced to prove that the parties negotiated the sale of the property prior to the execution of the final purchase agreement, and that the transaction was made at arm’s length. Nevertheless, Mr. Archer admitted that he was not personally involved in the negotiation and purchase of the subject property to which Exhibits B, C, and D pertain. Nor did Petitioner offer testimony from anybody who was. Consequently, the only evidence Petitioner offered about the negotiations and arm’s length nature of the transaction is hearsay.
12. “Hearsay” is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. (Ind. R. Evid. 801(c)). The Board’s procedural rules specifically address hearsay evidence:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 3-1-5(b). The word “may” is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it.

13. Because of their relevance, the exhibits should be admitted into the record. However, because Respondent objected and Petitioner failed to establish that any recognized exception applies, none of the exhibits can serve as the sole basis for the Board's decision.

BURDEN OF PROOF

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
15. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).
16. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).

17. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
18. The parties agreed that the assessment did not increase by more than 5% between 2013 and 2014 and that Petitioner has the burden of proof for 2014. The burden with regard to 2015 depends on the resolution of the 2014 matter and will be addressed in turn.

SUMMARY OF PETITIONER'S CONTENTIONS

19. Petitioner's representative, Richard Archer, contends that the property under appeal is an industrial facility that was built in 1965. It was owned previously by Elkhart Real Estate Holdings LLC who sold it to Petitioner, a subsidiary of Bluelinx Corporation, on June 12, 2013, for \$1,000,000. *Archer testimony; Pet'r Ex. A, C, E, F & J.*
20. Mr. Archer contends that the sale of a property is the best evidence of its value. In support of that contention, Mr. Archer presented Indiana Tax Court case *Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010), and Board decision *TPI of Montgomery County, LLC v. Montgomery County Assessor*, Petition No. 54-030-09-1-4-00176, et al. *Archer testimony; Pet'r Ex. K & L.*
21. Mr. Archer contends the sale constituted a valid arm's length transaction. To support that notion, Mr. Archer presented the final purchase agreement between Elkhart Real Estate Holdings LLC and Petitioner. He contends that the agreement shows that the parties are unrelated and that the terms of the sale were negotiated between a willing buyer and seller. *Archer testimony; Pet'r Ex. A.*
22. Mr. Archer also presented a draft purchase agreement which, he contends, is indicative of ongoing negotiations between the parties leading up to the ultimate transaction. He presented a sales disclosure form which contains no indication that anything other than an arm's length transaction occurred. He introduced several email exchanges involving the taxpayer which are also indicative of an arm's length transaction. Finally, Mr. Archer

points out that Respondent included the sale of the subject property in its own ratio study. While Respondent's witness, Mr. Fisher, testified that he does not perform ratio analyses for Elkhart County, he nonetheless stated that he would not include a non-arm's length transaction when performing any such analysis. *Archer testimony; Fisher testimony; Pet'r Exs. B, C, D, & I.*

SUMMARY OF RESPONDENT'S CONTENTIONS

23. Gavin Fisher is an Indiana licensed appraiser, a member of the Elkhart County Board of Realtors, and a certified Level III Assessor/Appraiser. He has performed such duties as valuation consulting, trending and annual adjustment analysis, and appeal support. His primary focus in northern Indiana, and especially in Elkhart County, has been valuing industrial manufacturing facilities. *Fisher testimony.* However, Mr. Fisher did not appraise the property.
24. Mr. Fisher contends his first step in this appeal was to review the subject property's sale price to determine if it was a reasonable reflection of the property's market value-in-use. He presented a 2009 LoopNet listing of the subject property, which he claims resulted in the 2012 sale of the property from Dexter Axle Company to Elkhart Real Estate Holdings LLC for \$1,480,000. Mr. Fisher contends that such a listing constitutes reasonable exposure to an open market for determining an arm's length transaction as contemplated by the Appraisal of Real Estate 4th Edition and the 2011 Real Property Assessment Manual. *Fisher testimony; Resp't Ex. A & B.*
25. On the other hand, according to Mr. Fisher, Petitioner's purchase of the property in 2013 for \$1,000,000 does not represent an arm's length transaction because the property was not listed on LoopNet nor was it otherwise exposed to the open market leading up to the sale. He also contends that \$1,000,000 is not a typical sale price for a similarly situated property in the Elkhart County market area. *Henkel argument; Fisher testimony; Resp't Ex. A & B.*

26. Mr. Fisher analyzed seven industrial sales to test the subject property's purchase price against other industrial sales in the market. To support his analysis, Mr. Fisher submitted sales disclosure forms and PRCs for each purportedly comparable property. The properties are all industrial properties located in Elkhart County and are similar in acreage, square footage, height, and age. *Fisher testimony; Resp't Ex. C – L.*
27. The subject property is situated on 8.09 acres, consists of 149,108 square feet, is 16 feet tall, and is 50 years old. The purportedly comparable properties sold between April 9, 2013, and January 16, 2015. Two of the properties are located in the same industrial park as the subject while three others are located in similar industrial parks within the City of Elkhart. The properties are located on lots between 5.39 acres and 9.98 acres in size, contain buildings ranging between 101,776 square feet and 154,473 square feet that are between 13 and 23 feet tall, and range in age from 36 to 59 years. The unadjusted sale prices range from \$10.18 per square foot to \$18.36 per square foot. Fisher testified that, considering the overall qualitative analysis of these properties, the most probable sale price of the subject property would range between \$12.00 per square foot and \$14.00 per square foot. Because the subject property is assessed at \$9.34 per square foot in 2014 and \$9.26 per square foot in 2015, Fisher argued the property it is not overvalued.² *Fisher testimony; Resp't Ex. D.*
28. Mr. Fisher stated that because the Assessor is not requesting an increase in the assessed value for 2014 or 2015, he did not perform a “qualitative analysis with actual dollar to dollar adjustments” on the seven comparable properties to come up with a single “price point” for the subject property for the years under appeal. *Fisher testimony.*
29. According to Mr. Fisher, typical buyers and sellers of industrial properties in Elkhart County are from locations in the Midwest such as Elkhart, Michigan, Illinois, or Ohio. Thus, the fact that the seller, Elkhart Real Estate Holdings LLC, is a Delaware LLC, and

² Mr. Fisher did not explain his calculations, but they appear to be in error. Based on 149,108 square feet and assessed values of \$1,227,100 and \$1,243,700 respectively, the assessed values per square foot would actually be \$8.23 for 2014 and \$8.34 for 2015.

that Petitioner is a Georgia LLC, is another indicator that this sale was not a normal transaction in the Elkhart County industrial market. *Fisher testimony*.

30. Finally, Respondent argues that the evidence indicates Petitioner purchased the subject property in 2013 at a “steep discount” without explanation, which further calls into question whether the sale was truly an arm’s length transaction. *Henkel argument; Pet’r Ex. B*.

ANALYSIS

31. Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance (“DLGF”) has defined as the property’s market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property’s market value-in-use, a party may offer evidence that is consistent with the DLGF’s definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005) Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles. *See Id; see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
32. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2014 and 2015, the valuation dates were March 1, 2014, and March 1, 2015, respectively. Ind. Code § 6-1.1-4-4.5 (f); 50 IAC 27-5-2 (c).

2014 Assessment:

33. There is no dispute that Petitioner purchased the subject property on June 12, 2013, for \$1,000,000. The parties, however, disagree on whether that amount represents the property's true tax value and whether the sale meets the definition of an arm's length transaction.
34. The purchase price of a property is often the best indication of property's value. *See Hubler Realty, Inc. v. Hendricks County Assessor*, 938 N.E.2d 311, 314 (Ind. Tax Ct. 2010) (the Tax Court upheld the Board's determination that the weight of the evidence supported the property's purchase price over its appraised value). Furthermore, the 2011 Real Property Assessment Manual defines market value as:

The most probable price, as of the specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and the seller acting prudently, knowledgeably, and for self-interest, and assuming neither is under undue duress.

MANUAL at 5-6.

35. In this case, the purchase occurred on June 12, 2013, which is just over eight months prior to the March 1, 2014, valuation date. The Board has generally determined that a sale occurring within one year of the valuation date is temporally sufficient to establish a prima facie case.
36. Petitioner argues the purchase agreement shows the parties were unrelated and that the price and terms of the sale were negotiated by a willing buyer and seller. Further, the purchase agreement shows that each party was represented by a broker. The seller was represented by CBRE, Inc., while Petitioner was represented by Century 21 Landmark. There is nothing contained in the sales disclosure form indicating anything other than an arm-length's transaction and, as Petitioner noted, Respondent used the sale of the subject property in his own ratio analysis. Furthermore, the fact that the property was not listed

on LoopNet immediately prior to the 2013 sale is not in and of itself determinative of whether or not the property was adequately exposed to the market. In light of these considerations, the Board finds the purchase price was probative for 2014 and that there is not sufficient evidence to indicate that the buyer and seller did not act prudently, knowledgeably, and in their own self-interests. Therefore, Petitioner has presented a prima facie case that the 2014 assessment should be reduced to \$1,000,000.

37. Once a petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach a petitioner's case, the respondent has the same burden to present probative evidence that the petitioner faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
38. Respondent sought to impeach Petitioner's case by offering a 2009 LoopNet listing. Mr. Fisher stated that the listing indicates that the subject property was on the market for three years prior to selling on October 17, 2012, for \$1,480,000 and that the listing constituted reasonable exposure to the market. However, Petitioner subsequently purchased the subject property after fewer than eight months on the market on June 12, 2013, for \$1,000,000. As alluded to previously, Respondent claims the subject property was not reasonably exposed to the market prior to that sale. Respondent's claim, however, is conclusory in nature and conclusory statements are not sufficient to establish an error in assessment. Consequently, the 2012 sale for \$1,480,000 is not enough to outweigh Petitioner's case. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
39. Next, Respondent offered a comparative market analysis of seven industrial properties in Elkhart County. The analysis was based on an average price per square foot. Respondent did not attempt to account for relevant differences among the properties. Consequently, the analysis has little or no probative value. As the Indiana Tax Court

stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), “the Court has frequently reminded taxpayers that statements that another property ‘is similar’ or ‘is comparable’ are nothing more than conclusions and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that the comparable property has been treated differently, the taxpayer must provide specific reasons as to why he or she believes the property is comparable. These standards are no less applicable to assessing officials when they attempt to rebut a prima facie case.” 836 N.E.2d at 1082.

40. Respondent’s analysis falls short of what is required for comparative sales data to carry probative weight. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (holding that taxpayers’ comparative sales data lacked probative value where they failed to compare relevant characteristics or explain how relevant differences affected value). Furthermore, rather than proposing a specific value for the subject property based on the analysis, Respondent merely concluded that the “most likely indication of value” for the subject property should be between \$12 and \$14 per square foot.
41. In this case, the June 12, 2013, purchase price provides the best indication of the property’s value for 2014. As a result, the Board finds the purchase price is sufficient to make a case for changing the 2014 assessment to \$1,000,000.

2015 Assessment:

42. As discussed above, the Board found the 2014 assessed value should be changed to \$1,000,000. Because the 2014 assessment was appealed by the taxpayer and the assessment was reduced as a result of that appeal, Respondent has the burden of proving the 2015 assessed value is correct. *See Ind. Code § 6-1.1-15-17.2(d)*.
43. Respondent presented the same evidence for 2015 that he did for 2014. For the same reasons that were discussed with regard to the 2014 appeal, the Board finds Respondent failed to prove that the original assessed value for 2015 is correct. Because Respondent failed to meet his burden, the 2015 assessment must be reduced to the previous year’s level of \$1,000,000.

CONCLUSION

44. Petitioner had the burden of proof for 2014 and provided sufficient evidence to value the property at \$1,000,000. For 2015, Respondent had the burden of proof and failed to prove the assessed value is correct. As a result, the assessed value for 2015 reverts to the 2014 amount.

FINAL DETERMINATION

45. The assessed values for both 2014 and 2015 must each be changed to \$1,000,000.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.